

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

IN RE NEW ENGLAND COMPOUNDING  
PHARMACY, INC. PRODUCTS  
LIABILITY LITIGATION

MDL No. 2419  
Dkt. No. 1:13-md-2419 (RWZ)

THIS DOCUMENT RELATES TO:

All Actions

**THE PLAINTIFFS' STEERING COMMITTEE'S PROPOSED AGENDA  
FOR THE JULY 28, 2016, STATUS CONFERENCE AND DISCOVERY HEARING**

The Plaintiffs' Steering Committee ("PSC") proposes the following agenda for the July 28, 2016, status conference (before both Judge Zobel and Judge Boal at 2:00 p.m.) and discovery hearing (before Judge Boal at 3:00 p.m.). The defendants, the Post Confirmation Officer, the FDA, and the U.S. Attorney's office have been given an opportunity to comment on this proposed agenda.

**A. MOTIONS FOR WHICH ORAL ARGUMENT IS REQUESTED DURING  
THE STATUS CONFERENCE**

1. Specialty Surgery Defendants' Motion to Remand Specialty Surgery Cases to Tennessee and To Establish Venue in Tennessee Via Section 157(B) or Section 1404(A) [Dkt. 2939]
  - a. PSC's Opposition [Dkt. 2969]
  - b. Specialty Surgery Defendants' Reply [Dkt. 2993]

**B. REPORT TO THE COURT**

1. Status of bankruptcy
  - a. Annual Report of Tort Trustee [Dkt. 2982]
  - b. Status of payments from Tort Trust
2. Status of insurance declaratory judgment actions
  - a. *State Farm Fire and Casualty Company v. Specialty Surgery Center PLLC, et al.*, 2:15-cv-00026 (M.D. Tenn.)

3. Status of discovery
  - a. Court rulings update
    - i. Order granting Dkt. 2954 Non-Party Wagner Emergency Motion to Stay re Dkt. 2927 Notice of Non-Party Wagner Deposition [Dkt. 2956]
    - ii. Amended Order Setting Box Hill Discovery Deadlines [Dkt. 2990]
    - iii. Order Granting In Part And Denying In Part Dkt. 2953 Non-Party Wagner Motion for Protective Order [Dkt. 2991]
4. Status of litigation track
  - a. Sarah Gilliam's Stipulation of Voluntary Dismissal [Dkt. 2968]
  - b. Court rulings update
    - i. Order denying request to remand the eight Box Hill cases [Dkt. 2958]
    - ii. Order granting in part and denying in part Dkt. 2390 Abdul Barakat and Ocean State Motion to Dismiss Simas Complaint. Allowed as to Counts II and III and denied as to Count I [Dkt. 2985]
  - c. Responses to show cause order regarding remand and transfer [Dkt. 2928]
    - i. Susan M. Edwards' Response To Order To Show Cause [Dkt. 2942]
    - ii. PSC's Motion for Extension of Time to Respond to Order to Show Cause Concerning Remand and Transfer in 15-cv-11367 [Dkt. 2943]
    - iii. PSC's Notice of Filing of Summary of Responses to the Court's Order to Show Cause Concerning Remand and Transfer [Dkt. 2946]
    - iv. Response To Order To Show Cause by Advanced Pain & Anesthesia Consultants PC d/b/a APAC Centers for Pain Management, BKC Pain Specialists, Cincinnati Pain

Management Consultants, Inc., Marion Pain Management  
Center, Inc. [Dkt. 2947]

5. Report from *Pro Se* Liaison
6. Schedule for Future Status Conferences
  - a. August 24, 2016, 11:30 a.m. (Boal)
  - b. September 29, 2016, 11:30 a.m. (Boal)

**C. FULLY BRIEFED MOTIONS (NOT CURRENTLY STAYED)**

1. Discovery-Related Motions
  - a. PSC's Motion to Modify Third Amended Protective Order of Confidentiality 814 [Dkt. 2992]
  - b. Specialty Surgery Defendants' Motion for Protective Order Pursuant to Federal Rule of Civil Procedure 26(c) [Dkt. 2906]
    - i. PSC's opposition [Dkt. 2920]
    - ii. Specialty Surgery Defendants' Reply [Dkt. 2955]
  - c. Joint Motion for Entry of Stipulated Qualified Protective Order Regarding Subpoena to Cumberland Medical Center Inc [Dkt. 2841]
2. Dispositive Motions
  - a. Proposed Suggestion of Remand (forthcoming)

**D. BRIEFING IN PROGRESS (NOT CURRENTLY STAYED)**

1. Discovery-Related Motions
  - a. PSC's Motion for Qualified Protective Order Concerning Production of Certain Information Maintained by Governmental Payers/Providers [Dkt. 2999]
  - b. Box Hill Plaintiffs and Box Hill Defendants' Motion for Extension of Common Fact Discovery Deadline (forthcoming)
2. Other Motions
  - a. Letter/request (non-motion) from Jay J. Blumberg, Esq. to Judge Zobel re: remand of the Premier cases [Dkt. 2984]

3. Dispositive Motions

- a. Specialty Surgery Defendants' Motion for Summary Judgment on the Plaintiffs' Claims for Strict Product Liability [Dkt. 2882]
  - i. Stipulation re Dkt. 2882 Motion for Summary Judgment [Dkt. 2986]
  - ii. PSC's Opposition re Dkt. 2882 Motion for Summary Judgment [Dkt. 2994]
  - iii. PSC's Declaration re Opposition to Motion For Summary Judgment [Dkt. 2995]
  - iv. PSC's Appendix/Exhibit re Opposition to Motion Summary Judgment [Dkt. 2996]
  - v. PSC's Response to Dkt. 2884 Statement of Material Facts L.R. 56.1 [Dkt. 2997]
  - vi. PSC's Counter Statement of Material Facts [Dkt. 2998]

**E. MOTIONS STAYED AS A RESULT OF DKT. 2898**

1. Saint Thomas Entities' Motion for Partial Summary Judgment on Putative Claims for Actual Agency and Direct Liability [Dkts. 2743, 2744, 2745]
  - a. PSC Opposition [Dkts. 2818, 2819, 2820]
  - b. Saint Thomas Entities' Reply [Dkt. 2854]
2. Tennessee Clinic Defendants' Motion to Compel David Kessler Deposition Completion and Mandate for Direct Responses [Dkts. 2763, 2766] (oral argument waived)<sup>1</sup>
  - a. Tennessee Clinic Defendants' Notice of Manual Filing of Exhibits 1-4 [Dkt. 2773]
  - b. PSC Opposition [Dkt. 2825]
  - c. Tennessee Clinic Defendants' Amended Reply [Dkt. 2838]
3. Nashville Healthcare Defendants' Motion to Strike Matthew Lee as Case-Specific Expert [Dkts. 2769, 2770]
  - a. Plaintiffs' Consolidated Opposition [Dkt. 2799]

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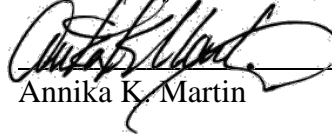
<sup>1</sup> See Transcript of April 14, 2016 Status Conference, 22:17-23:10.

4.     PSC Motion to Quash and for Protective Order Relating to David Kessler [Dkts. 2815, 2816]
  - a.     STOPNC Response [Dkt. 2837]
5.     PSC Motion to Strike Supplemental Mixon Report [Dkts. 2829, 2830] (oral argument waived)
  - a.     STOPNC Defendants' Opposition [Dkt. 2845]
  - b.     PSC Reply [Dkt. 2863]
  - c.     Order [Dkt. 2891]
  - d.     Joint Status Report Regarding Motions to Strike Matthew Lee as Case- Specific Expert and Bill Mixon's Supplemental Report by Vaughan A. Allen, M.D., John Culclasure, Howell Allen Clinic, A Professional Corporation, Saint Thomas Outpatient Neurosurgical Center, LLC, Debra Schamberg [Dkt. 2900]
6.     STOPNC Defendants' Notice of Filing Motion to Dismiss for Noncompliance with Tenn. Code Ann. § 29-26-122 [Dkt. 2874] (ostensibly applies to Bellwether cases)
7.     PSC Motion for Leave to File Motion for Partial Summary Judgment on Comparative Fault Defenses Regarding Governmental Entities [Dkt. 2862]
  - a.     STOPNC Defendants' Response [Dkt. 2868]
  - b.     Saint Thomas Entities' Response [Dkt. 2873]
8.     STOPNC Defendants' Motion for Leave to File Motions for Summary Judgment [Dkt. 2867]
  - a.     Saint Thomas Entities' Notice of Joinder [Dkt. 2880]
9.     STOPNC Defendants' Motion to Dismiss for Noncompliance with Tenn. Code Ann. § 29-26-121 [Dkts. 2869, 2870]
10.    STOPNC Defendants' Motion to Dismiss for Noncompliance with Tenn. Code Ann. § 29-26-122 [Dkts. 2871, 2872]
11.    Saint Thomas Entities' Motion for Leave to File Motion for Partial Summary Judgment on Claims for Apparent Agency [Dkt. 2878]
12.    Saint Thomas Entities' Motion for Leave to File Motion to Dismiss or, in the Alternative, Motion for Summary Judgment [Dkt. 2879]

- a. Stipulation/Correction re Motion for Leave to File Motion to Dismiss or, in the Alternative, Motion for Summary Judgment [Dkt. 2924]
- 13. PSC's Motion for Partial Summary Judgment [Dkt. 2887]
- 14. PSC's Motion for Extension of Time to June 10, 2016 to Complete Discovery Deadlines Set in Dkt. 2827 [2902]
- 15. Notice of Appeal of Magistrate Judge's Decision by Saint Thomas Entities [Dkt.2908]
- 16. Motion for Joinder in the Saint Thomas Entities Objections to Order Denying Motion to Dissolve Protective Orders and Lift Stays and Request for Ruling on Omnibus Motion at Doc. 2908 [Dkt. 2911]

Dated: July 25 2016

Respectfully submitted,



Annika K. Martin

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*Pro Se Liaison on behalf of the Plaintiffs'  
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**CERTIFICATE OF SERVICE**

I, Annika K. Martin, hereby certify that I caused a copy of the above Proposed Agenda to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's system, and notice of these filings will be sent to these parties by operation of the Court's electronic filing system.

Dated: July 25, 2016



Annika K. Martin